

JONES DAY

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VIA ELECTRONIC MAIL

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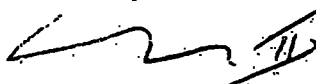
Jeff S. Jordan, Esq.
Assistant General Counsel
Complaints Examination & Legal Administration
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Response of Donald J. Trump, Donald J. Trump for President, Inc. &
Timothy Jost, as Treasurer, to MUR 7037

Dear Mr. Jordan:

Please find enclosed the response on behalf of our clients, Donald J. Trump, Donald J. Trump for President, Inc. and Timothy Jost, as Treasurer, to the notification from the Federal Election Commission that a complaint was filed against them in the above-referenced matter.

Cordially,



Donald F. McGahn II
*Counsel to Donald J. Trump, Donald J. Trump
for President, Inc., & Timothy Jost, as
Treasurer*

Enclosure

BEFORE THE FEDERAL ELECTION COMMISSION

)
) **MUR 7037**
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**RESPONSE OF DONALD J. TRUMP, DONALD J. TRUMP FOR PRESIDENT, INC.
AND TIMOTHY JOST, AS TREASURER, TO THE COMPLAINT**

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By and through undersigned counsel, Donald J. Trump, Donald J. Trump for President, Inc., (the "Committee") and Timothy Jost, as Treasurer (collectively, "Respondents") respond to the Complaint in the above-captioned MUR. We respectfully request that the Commission find there is no reason to believe a violation has occurred, dismiss the complaint, and close the file.

I. BACKGROUND

This matter arises from a complaint from the American Democracy Legal Fund, one part of a cluster of organizations that function as a *de facto* private wing of the Democratic Party. That Brad Woodhouse, who also heads Correct the Record—a Super PAC which provides services to the Clinton campaign as its "strategic research and rapid response team designed to defend Hillary Clinton," and subject to a FEC complaint of its own—is the architect and signer of the complaint is indicative of its plainly partisan nature.

The complaint stems from a news article and Twitter post regarding an advertisement run by the Committee concerning Governor John Kasich shortly before the Ohio Republican Primary. As the complaint admits, the advertisement included a statement by Mr. Trump, clearly stating "I'm Donald Trump and I approve this message." That statement was accompanied by an unobscured, full screen image of Mr. Trump. There also appeared onscreen a clearly readable written disclaimer "PAID FOR BY DONALD J. TRUMP FOR PRESIDENT, INC.

APPROVED BY DONALD J. TRUMP."

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The sole complaint in this matter is that the written disclaimer language was not located or repeated at the end of the advertisement. The advertisement in question was initially shipped to stations with the disclaimer text at the beginning of the spot due to a vendor error, and a substitute version with the disclaimer text at the end was shipped to stations the next day to replace the initial version. Accordingly, the ad with at worst a technical issue was extremely short-lived and appeared only a handful of times on a smattering of stations before being replaced with the correct ad that ran on the full complement of the stations for almost the entirety of the run.

II. ANALYSIS

At issue is an advertisement that contained the requisite "stand by your ad" voice over and accompanying candidate issue and the requisite "paid for" and "approved by" language. The complaint takes issue with the placement within the advertisement of the "paid for" and "approved by" language, which due to a vendor error appeared at the beginning of the advertisement. That technical issue was immediately caught and remedied, and the original advertisement was immediately substituted for one with that technical issue resolved. The original advertisement, which to the extent it aired at all may have aired for a very short period of time on a portion of the stations for which time was purchased, and quickly substituted for a fully compliant version which aired on the full complement of stations that were part of the media buy. All versions of the advertisement still contained both the candidate "stand by your ad" statement and the written disclaimer statement. Critically, even the original ad with the technical issue met the substantive requirements for television ads—it did not deprive the public of any identification, authorization, or approval information; the public was fully informed

concerning who paid for the ad and that the candidate responsible for it approved it.

Accordingly, we respectfully request that the Commission dismiss this matter.

A. The original advertisement with a technical disclaimer issue was shipped due to a vendor error, but was immediately replaced with a fully compliant version.

Due to a vendor error, an advertisement was initially shipped to stations with a technical issue regarding the disclaimer, and was replaced with a version that rectified the technical issue that shipped to stations the following day. The issue and this complaint boils down to a technical point—at precisely what point in an advertisement one line of disclaimer text appears—something akin to whether the disclaimer on printed materials is surrounded by a box or not.¹ Nonetheless, the technical issue was remedied immediately and the original advertisement was replaced so that the version that ran on an ongoing basis on the full complement of stations was fully compliant,² as are the Committee's other advertisements both before and after the original advertisement.

B. The advertisement nonetheless contained both a spoken "Stand By Your Ad" statement and the required written disclaimer, so the viewing public had full knowledge of who was responsible for the advertisement.

The purpose of the disclaimer requirements is to ensure the public knows who is responsible for political advertising. In the case of television advertisements, the basic substantive requirements are a candidate "Stand By Your Ad" statement and a written disclaimer. Both were present in the advertisement in question. There could be no confusion as to whose advertisement this was or whether Mr. Trump approved it. Though the complainant attempts to make hay of the fact that the Stand By Your Ad statement was at the beginning rather

¹ See MUR 6274 (Matt Miller) (dismissing complaint regarding failure to include disclaimer in a box due to the technical nature of the violation).

² Because internet videos are not obligated to comply with the television disclaimer requirements, there was no need to replace the original version in the online outlets cited in the complaint or which continue to appear online.

than the end, the candidate statement need not be in any particular place in the ad under the FEC regulations. The public was not deprived of any information within the 30 seconds of the advertisement.

C. The Commission has dismissed similar matters where committees have substantially complied with the disclaimer requirements, have remedied technical errors, or when the communication that failed to comply was a small or limited run, and ought to follow those precedents in this case.

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The Commission's practices indicate that inadvertent, technical disclaimer errors that do not mislead the public as to the origin of the advertisement are dismissed. In 2012, the Commission voted unanimously to dismiss MUR 6577 (Angela Valles), in which a committee ran a radio advertisement over the course of eight days that failed to include the Stand By Your Ad statement, before being replaced by a fully compliant advertisement. The Commission reasoned that the error was inadvertent, the public was not misled as to the source of the advertising (due to the candidate identifying herself and indicating her campaign paid for the ad), the error was remedied, and other campaign ads were compliant, and thus the matter was not pursued in either the enforcement or alternative dispute resolution processes. In the present case, the advertisement was even more substantially compliant since all the required disclaimers were present, the only issue regarding the disclaimers was technical rather than substantial, and the technical issue was resolved and the ad re-shipped the following day (rather than eight days later, as was the case in MUR 6577 – and even then, that matter was dismissed). *See also* MUR 6084 (John N. Kennedy) (dismissing matter regarding advertisement which contained written and oral authorization statements, albeit at the beginning of the advertisement, and which were replaced the next day with fully compliant advertisements); MUR 6042 (Pat Roberts) (dismissing matter concerning, among other deficiencies, a written disclaimer placed at the beginning, rather than

end, of an advertisement and which was not retracted or remedied). Accordingly, the Commission should dismiss this matter consistent with MURs 6577, 6084, and 6042.

In fact, the Commission has repeatedly dismissed matters regarding disclaimers that were lacking even compliance with the substantial written and oral disclaimer requirements, but that otherwise "contained sufficient identifying information to prevent the public from being misled as to who paid for them." MUR 6565 (Blaha for Congress) (dismissing complaint that advertisement failed to have *any* written approval statement and which paid for statement did not run up until the end of the advertisement); *see also, e.g.*, MUR 5834 (Darcy Burner) (dismissing matter surrounding failure to include written approval statement); MUR 6283 (Manfred Schreyer Committee) (dismissing matter concerning television advertisements that lacked the Stand By Your Ad statement).

Accordingly, we respectfully request this matter be dismissed and the file closed.

Respectfully,



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